

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

KENT COUNTY COURTHOUSE
38 THE GREEN
DOVER, DELAWARE 19901
PHONE: (302) 735-3910

CHARLES W. WELCH, III
JUDGE

July 19, 2016

Ms. Kemyetta Allen
1 Carpenter Street
Dover, DE 19904

Scott E. Chambers, Esq.
Schmittinger & Rodriguez
414 S. State Street
P O Box 497
Dover, DE 19903

RE: In the matter of Isaiah Marquais Allen to Isaiah Marquais Ezeani
C.A. No.: CPU5-14-001111

Decision on Motion to Vacate Name Change

Dear Ms. Allen and Mr. Chambers:

This civil case involves the name change of a six year old minor child named Isaiah. A petition to change the name of Isaiah was filed on December 30, 2014, to change his name from Isaiah Marquais Allen to Isaiah Marquais Ezeani. The Court heard the petition on January 14, 2015, and granted the name change. On or about January 27, 2016, Isaiah's natural mother, Ms. Kemyetta Allen, filed a motion to vacate the order granting the name change. She contends that she never received notice of the name change hearing for the petition to change Isaiah's name and that she was not present when it took place. After conducting a hearing on Ms. Allen's motion, the Court reserved decision. This correspondence constitutes the Court's decision. Ms. Allen's motion to vacate the name change for Isaiah is denied.

The petition to change Isaiah's name from Isaiah Marquais Allen to Isaiah Marquais Ezeani was filed on or about December 30, 2014. The petition indicated that it was filed by Isaiah's natural father, David Ezeani, and his natural mother, Kemyetta Allen. The petition further stated that Isaiah resided at 1 Carpenter Street, Dover, Delaware, which is Ms. Allen's residence. Attached to the petition was an affidavit that appears to be signed by both David Ezeani and Kemyetta Allen. The signatures on the affidavit appear to be the same signatures that appear on the petition for name change. Mr. Ezeani's signature appears in black ink on both documents. Ms. Allen's signature is in blue ink. It is interesting to note that the affidavit indicated that David Ezeani is Isaiah's natural parent, but, it does not mention that Ms. Allen is also his natural parent. A hearing for the petition to change Isaiah's name was scheduled for January 14, 2015. According to court records, a notice for the hearing was sent to Ms. Allen at 1 Carpenter Street, Dover, Delaware, and for Mr. Ezeani at 237 Cool Breeze Drive, Clayton, Delaware. A notice of the hearing was also sent to Isaiah at 1 Carpenter Street, Dover, Delaware.

The petition to change Isaiah's name from Isaiah Marquais Allen to Isaiah Marquais Ezeani was heard by the Court on January 14, 2015. Mr. Ezeani was present at the hearing and a female appeared claiming, on the record, to be Isaiah's biological mother. The name change was not contested. Therefore, it was granted by the Court.

On or about January 27, 2016, Ms. Allen filed correspondence with the Court that constitutes the instant motion. In her correspondence, she indicated that she was notified of Isaiah's name change by Isaiah's school on January 27, 2016. Ms. Allen further

indicated that she was not notified of the name change hearing and was not present when the name change occurred. She also indicated that she never signed any paperwork for the name change. Therefore, she wanted the order granting the name change vacated. This correspondence was signed by Ms. Allen in blue ink and her signature looks exactly like the signatures that were included on the original petition for name change that was filed on December 30, 2014, and for the affidavit that was filed with the petition.

Hearings for Ms. Allen's motion to vacate the order granting Isaiah's name change were scheduled by the Court for February 22, 2016, and March 7, 2016. The notices for these hearings were sent to Ms. Allen at her 1 Carpenter Street, Dover, Delaware, address. She received the notices and appeared for both of these hearings. At the March 7, 2016, hearing, the judicial officer hearing her motion recused herself from the case and the current judicial officer was assigned to hear the motion.

The Court next held a hearing for Ms. Allen's motion to vacate the order granting Isaiah's name change on or about June 6, 2016. At the hearing, Ms. Allen testified that she is Isaiah's biological mother and that the signatures on the petition and affidavit are not her signatures. She also testified that she never signed the affidavit in front of a notary public. Additionally, although she has recently moved, Ms. Allen testified that she lived at 1 Carpenter Street in Dover, Delaware, for a couple of years and that the residence listed on the original petition for name change for her and Isaiah was correct. However, Ms. Allen testified that she did not know that the petition for name change had ever been filed and she never received notice of the January 14, 2015, hearing for the petition. Ms. Allen further testified that the first time that she became aware of Isaiah's

name change was in January of 2016 when she had a conversation with the principal at Isaiah's school.

Ms. Allen's motion to vacate the order granting Isaiah's name change is made pursuant to Court of Common Pleas Rule 60(b)(4), on the grounds that the judgment, or order, is void due to defective service of process of the petition and notice of the hearing. A judgment, or order, is void when it is rendered without personal jurisdiction.¹ Since Ms. Allen has filed a motion to vacate an order of the Court, she has the burden to prove, by a preponderance of the evidence, that the order was void. Ms. Allen has failed to meet this burden.

An opportunity to be heard and due notice to the defendant is essential to the jurisdiction of all courts.² "Personal jurisdiction must be [effectuated] through proper service of process."³ In change of name proceedings, notice of the petition is served by publication in a newspaper "published in the county in which the proceeding is had, at least once a week for 3 weeks before the petition is filed."⁴ In addition, notice of the petition must also be personally served by mail upon the parent who did not join in the petition.⁵

¹ Midland Funding LLC v. Steele, 2013 WL 8845059, at *1 (Del. Com. Pl. Dec. 19, 2013) (citation omitted).

² Shurr v. Mun. City of Newark, 2004 WL 332508, at *1 (D. Del. Jan. 28, 2004) (quoting Earle v. McVeigh, 91 U.S. 503, 504 (1875)).

³ Id. (alteration in original).

⁴ 10 Del. C. § 5903.

⁵ Ct. Com. Pl. Civ. R. 81(c); *see also* Ct. Com. Pl. Civ. R. 5(b).

Notice of a hearing in a change of name proceeding must be properly served upon the defendant by mailing a copy of the notice to the defendant's last known address.⁶ "[T]here is a presumption that mailed matter, correctly addressed, stamped and mailed, was received by the party to whom it was addressed."⁷ "This presumption may be strengthened, weakened or overcome by proof of attendant pertinent circumstances."⁸ "Merely denying receipt [of notice] does not rebut the presumption."⁹ "Delaware courts have found this presumption to qualify as satisfactory evidence [of] delivery."¹⁰

Based on the evidence provided at the hearing for Ms. Allen's motion to vacate, the Court finds it difficult to believe that Ms. Allen had no knowledge of the petition for name change for Isaiah and the hearing that was scheduled for it. Notice of the petition was published in the Dover Post at least once a week for three weeks prior to the filing of the petition. Additionally, the signatures that appear for Ms. Allen on the petition and the affidavit match the signature that appears on her letter of January 27, 2016, requesting that the name change be vacated. As such, the Court finds that Ms. Allen joined in the petition and, therefore, no additional service of notice of the petition upon Ms. Allen was necessary. Furthermore, a notice for the January 14, 2015, hearing for the original petition for name change was mailed to Ms. Allen at her correct residential address and a separate notice was sent to Isaiah at the same address. These documents were not returned to the Court. It is difficult for the Court to accept that neither of these notices

⁶ Ct. Com. Pl. Civ. R. 5(b).

⁷ Windom v. Ungerer, 903 A.2d 276, 282 (Del. 2006) (quoting State ex rel. Hall v. Camper, 347 A.2d 137, 138-39 (Del. Super. 1975)).

⁸ Windom, 903 A.2d at 282 (quoting Graham v. Commercial Credit Co., 194 A.2d 863, 856-66 (Del. Ch. 1963)).

⁹ Windom, 903 A.2d at 282 (alteration in original).

¹⁰ Rehoboth-By-The-Sea v. Baris, 2015 WL 3643496, at *4 (Del. Com. Pl. June 10, 2015).

were delivered when Ms. Allen received the Court notices for the hearings that were sent to the same address for the hearings that she attended on February 22, 2016, and March 7, 2016. Mere denial of receipt of the Court's notice of the hearing by Ms. Allen is insufficient to overcome the presumption that notice was received. Given the totality of these circumstances, the Court finds that Ms. Allen has not met her burden to prove that the Court's order of January 14, 2015, changing Isaiah's name, is void for her lack of notice of the petition and the hearing that was scheduled for it. Therefore, her motion to vacate the order changing Isaiah's name to Isaiah Marquais Ezeani is denied.

IT IS SO ORDERED.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is fluid and cursive, with the first name "Charles" being the most prominent.

Charles W. Welch, III

CWW:mek